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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION EIGHT

In re Victoria B. et al., Persons  
Coming Under the Juvenile  
Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.C.,

Defendant and Appellant.

B293053

(Los Angeles County  
Super. Ct. No. DK17753B-C)

APPEAL from orders of the Superior Court of Los Angeles County, Steff R. Padilla, Juvenile Court Referee. Conditionally affirmed and remanded with directions.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

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Father A.C. appeals the juvenile court's dispositional orders for his then one-year-old twins, Victoria and Victoriano. His only contention on appeal is that the Los Angeles County Department of Children and Family Services (Department) and the juvenile court failed to inquire whether mother has any Indian heritage under the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq.), and failed to inquire of paternal relatives identified later in the proceedings whether they had any knowledge of father's Indian ancestry. Father has not made an offer of proof that his relatives have any information, or that mother has any Indian heritage. Nevertheless, we conditionally affirm the dispositional orders, and remand with directions regarding ICWA compliance.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

Given the narrow scope of this appeal, we limit our summary to those facts relevant to ICWA.

Victoria and Victoriano came to the attention of the Department several days after their birth. Mother already had an open dependency case for an older child, E.B., based on her inappropriate discipline of the child, violent behavior, drug and alcohol use, mental health problems, and the unsanitary conditions of her home.

Mother refused to discuss the children with the Department, and concealed their whereabouts. Father's identity and whereabouts were also unknown. Because the Department was unable to interview mother or father concerning their Indian ancestry, the Indian Child Inquiry Attachment to the dependency petition stated the Department had not made an Indian child inquiry.

On August 25, 2017, the court issued an arrest warrant for mother and protective custody warrants for the children. By September 1, 2017, mother had been arrested and the children were located and detained.

Mother was present for hearings on September 1, 29, and November 9, 2017; March 12, April 25, May 25, September 10 and 17, 2018. The record does not reflect that mother was asked about her Indian ancestry at any of these hearings. No Parental Notification of Indian Status form is in the record for mother.

The Department's September 21, 2017 Jurisdiction/Disposition report stated that the "Indian Child Welfare Act does or may apply," but that the Department was unable to obtain a statement from mother regarding the twins' ICWA status, and father's identity remained unknown.<sup>1</sup>

In November 2017, father made contact with the Department, and filed a Parental Notification of Indian Status form checking the "may have Indian ancestry" box, and writing "MGM [E.M./K.] may be a member of the "Cherokee and Soya" tribes. At a November 9, 2017 hearing, the court asked father if he or his maternal grandmother were registered members of any tribe, and father replied "no." He also informed the court his

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<sup>1</sup> It appears from the record in mother's pending appeal concerning her older child, E.B. (case No. B296088), that mother completed a Parental Notification of Indian Status form in June 2016, indicating that her "maternal grandfather" was a member of the Cherokee tribe. The same judge presided over most of the proceedings for all of the minors, and it appears the court had previously concluded there was no reason to know E.B. was an Indian child, which may explain the lack of information concerning ICWA inquiry as to mother for these children.

maternal grandmother was no longer living. He was unsure if anyone else in his family had any information regarding his Indian heritage. The court ordered the Department to interview father about his Indian heritage, and to notice the tribes identified by father's Parental Notification of Indian Status form.

In March 2018, the Indian Child Inquiry form attached to an amended petition indicated that the Department made an Indian child inquiry, and that the twins might be eligible for membership in the Cherokee tribe. A May 25, 2018 report stated that the Department had received notice from the Cherokee tribe that the children were not Indian children based on the information provided to the tribe then available to the Department.

On July 25, 2018, the Department sent notices to the Cherokee Tribes and the Bureau of Indian Affairs of the hearing scheduled on September 10, 2018.

The notices stated that the Department had no information as to mother because she refused to communicate with the Department, but that the court "previously found that ICWA does not apply as to the mother."

As to father, the notices reflected that the Department interviewed father in January 2018, and father told the social worker he believed his father's side of the family was affiliated with the Cherokee tribe. He provided the social worker with his father's name, but had no further information about his father. He advised the Department to contact paternal grandmother for more information. Father would "try to do some 'searching'" for more information.

Paternal grandmother told the Department she believed paternal grandfather's family was affiliated with the Cherokee

tribe. She provided the social worker with her parents' dates of birth (for E.M./K. and Edward M.), but had no further information about paternal grandfather.

At a September 10, 2018 hearing, as the court and parties were discussing potential family placements for the twins, father revealed he had a grandmother in Oakland, and an aunt, Doris S., in Pomona. He was not asked, and did not indicate, whether these relatives had any information about possible Indian heritage.

The Department made contact with Doris S., and her daughter, to discuss placement of the twins. There is no indication in the record whether these relatives were asked about possible Indian ancestry.

At the September 17, 2018 dispositional hearing, the court determined that ICWA did not apply.

Father filed a timely notice of appeal.

### **DISCUSSION**

Congress enacted ICWA “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.” (*In re Isaiah W.* (2016) 1 Cal.5th 1, 8.) ICWA requires notice to Indian tribes “in any involuntary proceeding in state court to place a child in foster care or to terminate parental rights ‘where the court knows or has reason to know that an Indian child is involved.’” (*In re Isaiah W.*, at p. 8.) The child’s tribe must receive “notice of the pending proceedings and its right to intervene.” (*In re H.B.* (2008) 161 Cal.App.4th 115, 120.)

“ICWA itself does not expressly impose any duty to inquire as to American Indian ancestry; nor do the controlling federal regulations. . . . But ICWA provides that states may provide

‘a higher standard of protection to the rights of the parent . . . of an Indian child than the rights provided under [ICWA]’ . . . , and long-standing federal guidelines provide ‘the state court shall make inquiries to determine if the child involved is a member of an Indian tribe or if a parent of the child is a member of an Indian tribe and the child is eligible for membership in an Indian tribe.’ ” (*In re H.B.*, *supra*, 161 Cal.App.4th at pp. 120-121, fns. and citations omitted.)

Under state law, Welfare and Institutions Code former section 224.3<sup>2</sup> imposes on the juvenile court and the Department “an affirmative and continuing duty to inquire whether a child . . . is or may be an Indian child . . . .” (§ 224.2, subd. (a).) If there is “reason to believe that an Indian child is involved in a proceeding” further inquiry regarding the possible Indian status of the child “shall” be made, including “[i]nterviewing . . . extended family members” to obtain the necessary information to notice the tribes. (*Id.*, subd. (e)(1).)

Similarly, the California Rules of Court impose on the court and Department “an affirmative and continuing duty to inquire whether a child is or may be an Indian child . . . .” (Cal. Rules of Court, rule 5.481(a).) The rules require the Department to “ask . . . the parents . . . whether the child is or may be an Indian child” and to “complete the Indian Child Inquiry Attachment . . . and attach it to the [dependency] petition . . . .” (Rule 5.481(a)(1), *italics omitted.*) Additionally, “[a]t the first appearance by a

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<sup>2</sup> The substantive provisions of Welfare and Institutions Code former section 224.3 have been renumbered as section 224.2, effective January 1, 2019, pursuant to Statutes 2018, chapter 833, section 7.

parent, . . . the court must order the parent . . . to complete [a] Parental Notification of Indian Status [form].” (Rule 5.481(a)(2), italics omitted.) If the parent does not appear at the first hearing, the court must order the Department “to use reasonable diligence to find and inform the parent . . . that the court has ordered the parent . . . to complete” the Parental Notification of Indian Status form. (Rule 5.481(a)(3).)

As to mother, no Parental Notification of Indian Status form appears in the record in this appeal, and mother was never asked to complete one at any of the many hearings she attended.

As to father, it appears the Department did not ask his grandmother in Oakland or aunt Doris whether they had any information about Indian ancestry. Father did not have contact information for his grandmother.

Father has not made any showing, in his briefs or otherwise, that his grandmother or aunt possess any useful knowledge about his possible Indian ancestry, or that mother has any Indian heritage. (*In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1431.) The Department may be unable to contact the grandmother, if no relative has any contact information for her. Nevertheless, to the extent that father is acting as a surrogate for the tribe, to achieve the purpose of providing notice sufficient to allow the tribe to determine whether the twins are Indian children, we will conditionally affirm the dispositional orders, and remand with instructions that the Department comply with its duty to inquire, or inquire further, and any resulting duty to provide notice to the tribes. (See, e.g., *In re N.G.* (2018) 27 Cal.App.5th 474, 484.)

### **DISPOSITION**

The dispositional orders are conditionally affirmed. The matter is remanded to the juvenile court with directions to comply with the inquiry provisions of Welfare and Institutions Code section 224.2 and California Rules of Court, rule 5.481 as to mother and father, and, if as a result of that inquiry, there is reason to know Victoria and Victoriano are Indian children, with any resulting notice obligations under ICWA, section 224.3, and rule 5.481.

GRIMES, Acting P. J.

WE CONCUR:

STRATTON, J.

WILEY, J.